

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PABLO ALMONTE,

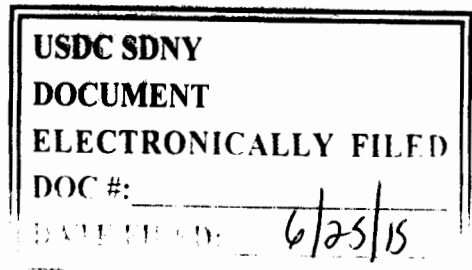
Petitioner,

-against-

13 Civ. 6187 (CM)(JCF)

WILLIAM LEE, Green Haven C.F.
Superintendent,

Defendant.



ORDER ACCEPTING RECOMMENDATION AND ADOPTING MAGISTRATE
JUDGE'S REPORT AS THE OPINION OF THE COURT

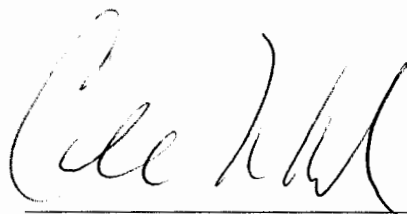
McMahon, J.:

I have reviewed the Report of The Hon. James C. Francis, U.S.M.J., which recommends that the petition for a writ of habeas corpus be denied and the action dismissed. I accept the report's recommendation and adopt Judge Francis' excellent and thorough opinion as the opinion of the court, with the following addition: Petitioner's argument that he was the victim of pre-indictment delay even though the statute of limitations had not run fails for the very reason that it succeeded in this court's decision in *United States v. Santiago*, 987 F. Supp., 465 (S.D.N.Y. 2013). Petitioner Almonte has made absolutely no non-speculative showing of actual prejudice, which is a pre-requisite for such a finding. Nor has he come close to establishing that it violated notions of fundamental fairness to indict him 10 years after the shooting in which he participated, which Wilfredo Santiago was able to do. Indeed, a reading of *Santiago* virtually compels agreement with the learned Magistrate Judge's conclusion.

The petition is denied, and this action is dismissed with prejudice.

As Petitioner has made no substantial showing of the denial of a constitutional right, there is no question of substance for appellate review. Therefore, no certificate of appealability shall issue. 28 U.S.C. § 2253; see *United States v. Perez*, 129 F. 3d 255, 259-60 (2d Cir. 1997); *Lozada v. United States*, 107 F. 3d 1011 (2d Cir. 1997); *Rodriguez v. Scully*, 905 F. 2d 24 (2d Cir. 1990). I certify, pursuant to 28 U.S.C. § 1915(a), that an appeal from this order would not be taken in good faith. *Coppedge v. United States*, 369 U.S. 438 (1962).

Dated: June 25, 2015

A handwritten signature in black ink, appearing to read "Eric H. H.", written over a horizontal line.

U.S.D.J.

BY ECF TO ALL COUNSEL